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DEPARTMENT OF HEALTH
AND ENVIRONMENT

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Division of Environment

MEMORANDUM

DATE: June 7, 2007

TO: Craig Thompson, Bureau of Environmental Field Services
Hearing Officer

FROM: Thomas A. Conley, Chief, Radiation and Asbestos Control Program

SUBJECT: Public Comment Response – Radiation Regulations

Comments were received from the Joint Committee on Administrative Rules and Regulations, Nuclear Regulatory Commission and the Public Hearing. Responses to those comments are as follows:

Joint Committee on Rules and Regulations comments

- KAR 28-35-135a. In subsection (q), the Committee believes that clarity is needed in the first phrase of the definition of "alert," since "a period during which an event could occur" does not appear to have any meaning. In subsection (u), the Committee suggests making reference to the specific subsection where the adoption by reference is being made, rather than to the adoption by reference "in the regulation."

Response:

The wording in subsection (q) will be changed to clarify the definition of alert as follows:

"Alert" means a period during which one of the following could lead to a release of radioactive material that is not expected to require a response by off-site response organizations to protect persons off-site:

1. Conditions have arisen that could cause an event.
2. An event is in progress.
3. An event has occurred.

In subsection (u), the reference to the adoption by reference "in this regulation" is used to avoid cross reference difficulties when sections change in subsequent revisions. During the previous set of revisions, administrative guidance recommended removing all internal cross section referencing to avoid such difficulties. The reference used is to the specific regulation, but not to the section.

- KAR 28-35-135d. In subsection (j), the Committee suggests that the agency include a cross-reference to where (the specific regulation) the "appendices" are adopted by reference.

Response:

The cross reference, "which is adopted by reference in K.A.R. 28-35-135a" will be added.

- KAR 28-35-135r. In subsection (r), there is a definition of "radioactive material" which does not appear to match the definition provided in statute (KSA 48-1603(n)). The Committee believes that the agency should review the definition to determine if the two definitions should be identical.

Response:

The terms that are included in Part 1 of the regulations as well as the statutes are included in Part 1 for clarification and user friendliness. The definition of radioactive material in Part 1 is consistent with the statutory counterpart. There is currently a federal Task Force being formed to develop transition plans regarding some new definitions that will be changed at the federal level. Based on the recommendations of this task force it may be necessary to change some of the statutorily defined terms. Until the recommendations of this task force become available, no changes in the definitions are required.

- KAR 28-35-180a. In subsection (h), the Committee suggests the addition of the words "manufactured by the licensee" after the end of the first sentence to clarify that the licensee does not have to assign a serial number to each nationally tracked source.

Response:

The words "manufactured by the licensee" will be added as specified.

- KAR 28-35-181m. In subsection (b), the Committee believes that there should be an "or" between (1) and (2) since the subsection begins with the phrase "either of the following."

Response:

No changes are required since both paragraphs in this subsection are complete sentences, and the preceding text in (b) states "either of the following." Using a period to separate the subsequent paragraphs is consistent with the current regulatory style.

- KAR 28-35-203. Reference is made to a KAR in this regulation, but there is no "KAR" preceding the reference. Please check all references throughout this set of regulations to make sure each is preceded by "KAR."

Response:

The "K.A.R." will be placed preceding the reference in the appropriate section.

Nuclear Regulatory Commission comments

- KAR 28-35-135n(b). In the definitions section under nationally tracked sources Kansas omits the part of the definition explaining the difference between Category 1 and Category 2 nationally tracked sources.

Response:

The definition explaining the difference between Category 1 and Category 2 nationally tracked sources will be added and will read as follows: “Category 1 nationally tracked sources contain radioactive material in quantities equal to or greater than the category 1 threshold. Category 2 nationally tracked sources contain radioactive material in quantities equal to or greater than the category 2 threshold but less than the category 1 threshold.”

- KAR 28-35-230g(g) and (h). Regarding reports of transactions involving nationally tracked sources Kansas omits the part of the regulation explaining the methods of error detection.

Response:

The sentence, “These errors can be detected by methods that may include administrative reviews or physical inventories required by these regulations.”, will be added.

Other Public comments

- Wade Caldwell representing the Kansas Asphalt Paving Association and Lawrence Buening representing the Kansas Board of Healing Arts appeared at the Public Hearing that was held on April 25, 2007.
- No comments pertinent to the structure and content of the regulations were received. Comments were of an interpretative nature and were addressed by staff after the public hearing was concluded.